

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeene G. Kelly.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER06-608-000

ORDER REJECTING, WITHOUT PREJUDICE,
PROPOSED TARIFF REVISIONS

(Issued April 4, 2006)

1. This order rejects, without prejudice, the proposed revisions to the Midwest ISO's Transmission and Energy Markets Tariff (TEMT).¹ The Midwest ISO proposes to remove the definitions of Residual Load and Residual Load Zone from the TEMT; to redefine Residual Load as unaccounted for energy (UFE) and to spread the UFE to all load in each Control Area. The Midwest ISO requests an effective date of 60 days following the final Commission order on these proposed revisions. As discussed below, we find that the Midwest ISO has failed to fully explain or justify its proposal.

¹ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (TEMT II Order), *order on reh'g*, 109 FERC ¶ 61,157 (2004) (TEMT II Rehearing Order), *order on reh'g*, 111 FERC ¶ 61,043 (2005) (Compliance Order III). By these orders, the Commission approved Midwest ISO's proposed TEMT. Pursuant to the TEMT, Midwest ISO was able to initiate Day 2 operations in its 15-state region. Midwest ISO's Day 2 operations include, among other things, day-ahead and real-time energy markets and a financial transmission rights (FTR) market for transmission capacity. The TEMT contemplates that all services provided pursuant to its terms and conditions will be provided by a Transmission Provider. The TEMT defines "Transmission Provider" as Midwest ISO or any successor organization. *See* Module A, section 1.320, Original Sheet No. 133. For clarity, we will refer to Midwest ISO wherever the TEMT refers to the Transmission Provider.

I. Background

2. Under existing TEMT language, Residual Load is defined as differences between: (i) the reported amount of injections and imports into the control area; and (ii) the amount of State Estimator determined Losses and reported withdrawals from the control area. Residual Load is then used to reduce or increase the report[ed] volume of the Residual Load Zone for the Control Area.²

3. Residual Load Zone is the single Commercial Node³ identified by the Transmission Provider in [the] Control Area where any calculated Residual Load is allocated for the purpose of Settlements.⁴

4. Under the TEMT section 38.2.5(e)(vi), which describes Market Participants Obligations pertaining to metering, and section 38.5 describing Load Aggregation, the Transmission Provider will apply any calculated Residual Load in each Control Area to the withdrawal data for Residual Load Zone in that Control Area for settlement purposes.

5. The Midwest ISO's Business Practices Manual further explains that each Balancing Authority has a single Asset Owner designated as the Balancing Authority Residual Load Owner. The Balancing Authority Residual Load Owner is assigned the unaccounted for energy (the residual of generation plus actual schedule interchange less load, less the Midwest ISO state estimator losses) for each and every hour. The residual load can be either positive or negative and is added into the Asset Owner's billable meter volume at one of their Commercial Nodes.⁵

6. Since the inception of the Midwest ISO's energy markets in April 1, 2005, the Midwest ISO has assigned the costs associated with the differences defined as Residual Load to the Control Areas themselves as described above.

² See section 1.271 of the TEMT.

³ Commercial Node is then defined as a Node in the Commercial Model used to schedule and settle Market Activities, where the Commercial Model represents the Commercial Nodes and the Market Participants at which and between which the Energy Markets function. See section 1.32 and 1.33 of the TEMT.

⁴ See section 1.272 of the TEMT.

⁵ See Business Practices Manual for Market Settlements. Version 8, p. A-119. Last modified: December 22, 2005.

II. Proposed Revisions to Midwest ISO's TEMT

7. The Midwest ISO proposes, among other things, to remove all references to the definitions of Residual Load and Residual Load Zone from the TEMT and replace them with a new definition of UFE. The proposed definition states:

Unaccounted for Energy: The result of a calculation used to determine the amount of over or under claimed Energy in a Balancing Authority Area. The calculation determines the difference between: (i) the reported amount of injections and net imports into the Control Area; and (ii) the amount of State Estimator determined Losses and the reported amount of withdrawals from the Control Area. Unaccounted for Energy is then used to reduce or increase the reported volume of the Commercial Node(s) withdrawing Energy in that Balancing Authority Area on a Load Ratio Share where this factor is calculated as the withdrawal reported at a given Commercial Node divided by the sum of all withdrawals at all Commercial Nodes within a Balancing Authority Area.

Additionally, the Midwest ISO proposes to make corresponding changes in sections 38.25(e)(vi) and 38.5 of Module C in the TEMT to specify that, for settlement purposes, the Midwest ISO will apply any calculated UFE in each Balancing Authority Area (BAA) to the withdrawal data for each Commercial Node withdrawing energy in each BAA on a load ratio share. The Midwest ISO states that even if every Market Participant had revenue quality meters, there would still be UFE and because each Market Participant and BAA is configured differently, there is no "one size fits all" solution. The Midwest ISO proposes these revisions to the TEMT in an effort to minimize the physical and financial impacts of UFE on all market participants.

8. The Midwest ISO states that the proposal was the result of a Meter Data Task Force, where stakeholders passed a motion calling for a change from the current use of Residual Load definitions to the use of a definition for UFE. The motion passed unanimously at the Meter Data Task Force. Subsequently, the motion was forwarded to the Market Settlements Working Group where the motion underwent discussion but no motion was made on the recommended change in tariff language. The Market Settlements Working Group, however, unanimously voted to forward the issue on to the Markets Subcommittee for review and consideration. The motion to approve the UFE definition passed the Markets Subcommittee narrowly with a vote of twelve in favor and nine opposed. After this close vote, the issue was then forwarded to the Advisory Committee where no action was taken at the June 15, 2005 meeting; thus allowing all prior motions passed by prior stakeholder forums to stand.

III. Notice, Interventions and Protests

9. Notice of Midwest ISO's filing was published in the *Federal Register*, 71 Fed. Reg. 8,300 (2006), with motions to intervene and protests due no later than February 24, 2006. Otter Tail Power Company (Otter Tail), Detroit Edison Company (Detroit Edison), and WPS Resources Corporation (WPS) filed timely motions to intervene in support of Midwest ISO's proposal. Wisconsin Electric Power Company (Wisconsin Electric) filed a timely motion to intervene and comments that conditionally supports Midwest ISO's proposal. The Midwest Transmission-Dependent Utilities (Midwest TDUs)⁶ filed a timely motion to intervene and protest. American Municipal Power-Ohio, Inc. and Consumers Energy Company filed interventions out-of-time, without substantive comments. The Midwest ISO filed an answer to the protest and comments. The Midwest TDUs filed an answer to the Midwest ISO's answer.

A. Comments in Support of Midwest ISO's Proposal

10. Detroit Edison and WPS support the Midwest ISO's proposed definition for UFE. Detroit Edison notes that currently local distribution companies within each BAA are at a competitive disadvantage in relation to other load serving entities in the same region. This disadvantage exists because these local distribution companies are forced to shoulder all UFE costs associated with that region, including costs properly attributable to and borne by their competitor load serving entities. Detroit Edison supports the Midwest ISO's proposal because it assigns UFE to all load serving entities within each BAA on a load ratio share basis. WPS, in a similar manner, supports the proposal because it asserts that the proposal assigns costs and provides proper price signals to those who cause the costs to be incurred.

11. Otter Tail favors the Midwest ISO's proposal because it asserts that allocating UFE solely to the BAA operator, required under existing tariff language, imposes an undue financial burden on the BAA operator. Otter Tail believes that the Midwest ISO's proposal provides an impartial solution to a problem that does not possess a clear cost-

⁶ For purposes of this filing, the Midwest TDUs are: Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, Upper Peninsula Transmission Dependent Utilities, and Wisconsin Public Power Inc.

causation solution and is superior to an otherwise inequitable allocation to the BAA.⁷ Otter Tail argues that allocation of UFE on a load ratio share basis is not unique.⁸ Otter Tail also supports the Midwest ISO's proposal for treating UFE as necessary because of the likelihood of future BAA consolidation within the Midwest ISO.⁹

B. Requested Revision to Proposal: Use "Balancing Authority" Instead of "Control Area"

12. Wisconsin Electric states that it does not oppose the Midwest ISO's proposal but requests that the Midwest ISO be required to amend the TEMT to eliminate all references to "Control Area." Wisconsin Electric contends that the term "Control Area" has or should have been replaced throughout the TEMT with the terms "Balancing Authority" and "Balancing Authority Area," as appropriate. According to Wisconsin Electric, the proposed definition of UFE includes substantive non-definitional processes that should also be included in the revisions to Module C of the TEMT. Wisconsin Electric contends that these substantive non-definitional processes contain the mechanics for implementing the proposed UFE.

⁷ Under the Midwest ISO's current residual load allocation, Otter Tail claims that it is incurring undue costs that are not directly attributable to Otter Tail's actions or inactions. According to Otter Tail, within its control area, there are 33 commercial nodes modeled in the Midwest ISO commercial model. Of those 33 commercial nodes, only 11 are registered to Otter Tail. As a result, Otter Tail notes that under the current Residual Load definitions, as the BAA operator, that it is being assigned the residual load not only for its own registered commercial nodes, but also for the remaining 22 commercial nodes that are registered by the other nine market participants registering load within the Otter Tail BAA. Otter Tail believes that the allocation of these costs to Otter Tail is inequitable, as these costs are not directly attributable to Otter Tail's actions or inactions.

⁸ See Otter Tail Comments at 4 n. 2 *citing* ERCOT Protocols § 11.3.6.2 (Allocation of UFE); California Independent System Operator Corporation, Settlements Guide, "Unaccounted for Energy," Charge #0406; New York Independent System Operator, Market Settlement, Settlements Guide, Version 1.29 §§ 2.1.1.5.2.1, 2.1.1.5.4.

⁹ According to Otter Tail, the consolidation of BAAs will place several market participants within a reduced number of BAAs. Thus, Otter Tail argues that an equitable method for allocating UFE amongst all of the market participants within the consolidated BAA is essential.

13. In its answer, the Midwest ISO objects to Wisconsin Electric's request to substitute terminology. According to the Midwest ISO, the terms "Control Area" and "Balancing Authority" are not interchangeable. According to the Midwest ISO, the term "Balancing Authority," as used in the TEMT, is much more limited than the use of the term Control Area, which is used broadly throughout other areas of the TEMT.¹⁰

C. Protest to the Midwest ISO's Proposal

14. In its protest, the Midwest TDUs states that the Midwest ISO's proposal includes none of the supporting data necessary for meaningful evaluation of its justness or reasonableness. The Midwest TDUs asserts that the proposal concedes that non-control areas with revenue quality meters may have less UFE than control area utilities that do not use revenue quality meters for their own loads, and that, because of these differences, there is no "one size fits all" solution. The Midwest TDUs argues, however, that the proposal constitutes a "one size fits all" solution that fails to hold the Midwest ISO or its Control Area Operators accountable.

15. The Midwest TDUs further asserts that the filing does not disclose the magnitude of the costs that will be reassigned from control area operators to non-control area utilities within the BAA despite requests to provide this information. According to the Midwest TDUs, the percentage of UFE (in relation to total control area load) is also unspecified which makes it impossible to determine whether the percentages are reasonable given standard industry practices and the extent to which they vary from one control area to the next.

¹⁰ The Midwest ISO asserts that the term "Balancing Authority" as defined in the TEMT reads as "maintaining Resource to Load interchange balance within a Balancing Authority Area and supports interconnection and frequency in real-time." This term says the Midwest ISO is narrow when contrasted with the term "Control Area" which is defined as "an electric power system or combination of electric power systems bounded by interconnection metering and telemetering to which a common generation control scheme is applied in order to: (i) match the power output of the Generation Resources within the electric power system(s) and Energy delivered from or to entities outside the electric power system(s), with the Load within the electric power system(s); (ii) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice; (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice and the criteria of the applicable Regional Reliability Council of NERC. *See* Midwest ISO Answer at 4.

16. The Midwest TDUs states that the Midwest ISO proposes to spread UFE in each control area to all load in that control area, regardless of whether those costs can fairly be attributed to that load. Since the Midwest ISO has not defined allowable sources of UFE, the Midwest TDUs states they must speculate as to the possible sources, such as: (1) control area meter inaccuracies from reliance on non-revenue quality meters; (2) reliance on EMS estimates for control area load and net imports; (3) control area use of estimates for distribution level losses; (4) control area use of preliminary data for its load estimates; and/or (5) the difference, if any, between the Midwest ISO calculated transmission losses and the transmission losses calculated by the control area operator's state estimator. The Midwest TDUs asserts that the only potential source of UFE that might be appropriately allocated (in part) to non-control area utilities is the fifth.¹¹ The Midwest TDUs claims that the other four sources of UFE are inaccuracies associated with the control area's calculation of its own load, due to the control area's failure to install revenue quality meters for that purpose, and are not properly borne by entities with revenue quality meters and cannot be fairly linked to non-control area utilities with revenue quality meters.

17. According to the Midwest TDUs, the proposal does not adhere to cost-causation requirements because the Midwest ISO maintains that the UFE provisions cannot be bound by statutory ratemaking requirements since they are subject to significant unavoidable error. The Midwest TDUs cites *Sierra Pacific* wherein the Commission rejected tariff provisions failing to allocate UFE to the load that caused it.¹² The Midwest TDUs believe that the Midwest ISO's proposal is also inconsistent with the public interest by creating undesirable incentives for control area operators. If the Midwest ISO is allowed to socialize control area operator UFE costs to non-control area utilities, the Midwest TDUs asserts that the Midwest ISO will reward systems that employ the worst business practices instead of those that employ the best business practices. Furthermore, if the Midwest ISO's proposal is accepted, the Midwest TDUs states that control areas that have plans to install revenue quality meters for their own loads will be incented to stop those improvements. According to the Midwest TDUs, control area consolidation would no longer be attractive to a control area operator that has the opportunity, through the Midwest ISO's proposal, to shift costs fairly attributable to its own load to others.

18. The Midwest TDUs believe that the Midwest ISO should be required to justify and define the sources of UFE that are attributable to non-control area operator utilities' load.

¹¹ See Midwest TDUs Comments at 10.

¹² *Sierra Pacific Power Co.*, 93 FERC at 61,305 (2000) (*Sierra Pacific*).

To the extent the Midwest ISO identifies such sources, the Midwest TDUs argue that the Midwest ISO should be required to implement procedures to ensure accountability and transparency.

19. Midwest ISO summarily responds to the Midwest ISO TDUs' concerns by asserting that it "does not have the systematic ability to provide . . . granular categorization of UFE origins . . . [which would give it the] ability to directly assign the costs associated with UFE to the exact origin, therefore eliminating the need for the instant proposal."¹³ The Midwest TDUs filed an answer that reiterates the arguments in their protest.

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also grant American Municipal Power-Ohio, Inc.'s and Consumers Energy Company's unopposed motions to intervene out-of-time given their interest in the proceeding and the absence of any undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's and the Midwest TDUs' answers because those answers provided information that assisted us in our decision-making process.

B. Commission's Determination

22. We find that the Midwest TDUs has raised significant concerns that have not been addressed by the Midwest ISO. We agree with the Midwest TDUs' assertion that the Midwest ISO has not explained its proposal nor demonstrated how its proposal follows cost-causation principles and produces just and reasonable results.¹⁴

¹³ Midwest ISO Answer at 3.

¹⁴ See *American Electric Power Service Corporation*, 72 FERC 61,287 at 62,239 (1995) stating that the utility has the burden of proof on matters involving increases in rates or changes in existing terms and conditions.

23. In *Sierra Pacific* the Commission rejected proposed tariff revisions because they failed to allocate UFE to the load that caused it. So is the case in the instant proceeding. The revisions proposed here would lump together all of the errors, many of which may be attributable to the retail load of the local distribution company associated with the BAA, and allocate the amount evenly across all wholesale customer classes. The Midwest ISO has not demonstrated that UFE, as defined in this proposal, is attributable solely to existing wholesale transmission customers.¹⁵ Furthermore, we agree with the Midwest TDUs that, as a consequence of not following cost-causation principles,¹⁶ the proposed revisions, if accepted, could serve as a disincentive to BAAs to improve their metering facilities.

24. For the reasons stated above, we will reject the proposed revisions, without prejudice to the Midwest ISO revising the proposal to address the intervenors' and our concerns. In light of our rejection of the proposed revisions, we find that Wisconsin Electric's request that the Midwest ISO be required to eliminate all references to "Control Area" need not be addressed.

The Commission orders:

Midwest ISO's proposed tariff revisions are hereby rejected, without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁵ See *Sierra Pacific* at 61,305.

¹⁶ See e.g., *Cincinnati Gas & Electric Co.*, 71 FERC 61,380 at 62,478 fn 30 (1995) citing, *The Town of Norwood v. FERC*, 962 F.2d 20 at 25 (D.C. Cir. 1992) and *Union Electric Company v. FERC*, 890 F.2d 1193 at 1198 (D.C. Cir. 1989) for the proposition that rates should fairly track the costs for which the ratepayers are responsible.